

SEP 27 2006

1 For The Northern Mariana Islands
2 By _____
3 (Deputy Clerk)3
4 IN THE UNITED STATES DISTRICT COURT
5
6 FOR THE NORTHERN MARIANA ISLANDS

7 SAIPAN HANDICRAFT,

Case No. CV-05-0040

8 Plaintiff,

ORDER:

9 vs.

**(1) GRANTING MOTION TO
WITHDRAW AS COUNSEL; and
(2) TAKING HEARING OFF
CALENDAR**10 MICRONESIAN WOODCRAFT ENTERPRISES,
11 INC., et al.,

12 Defendants.

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14 **THIS MATTER** came before the court on Friday, September 22, 2006, for hearing of
15 attorney F. Matthew Smith's motion to withdraw as counsel for plaintiff. Plaintiff appeared
16 personally and by and through its attorney, F. Matthew Smith; defendants Micronesian Woodcraft
17 and Tirzo J. Adriatico appeared by and through their attorney, Danilo T. Aguilar; defendants Arenas
18 Enterprise, Inc., Commonwealth Pacific International, Inc., Ta Bun Kuy, Full House, Inc., and Kan
19 Pacific Saipan, Ltd., appeared by and through their attorney Richard W. Pierce; and defendants LK
20 Corporation, Young Jo Lee, Byung Deuk Lee, Town, Inc., and Yun's Corporation, appeared by and
21 through their attorney Edward Manibusan.22 **THE COURT**, having fully considered the arguments of plaintiff's attorney, **HEREBY**
23 **GRANTS** Mr. Smith's motion to withdraw as counsel of record.24 Under Civil Local Rule 83.5.g.4, "[a]n attorney may withdraw from a civil . . . case only after
25 order of the court upon motion and for good cause shown, and after serving notice upon his or her
26 client and opposing counsel." Under Rule of Discipline 2(h), which adopts the Model Rules of

1 Professional Conduct, “[Mr. Smith] shall not represent a client if the representation involves a
 2 concurrent conflict of interest.” Model Rules of Prof’l Conduct R. 1.7(a); *see id.* 1.16(a)(1)
 3 (requiring the lawyer to terminate representation if “representation will result in violation of the rules
 4 of professional conduct or other law”). Here, Mr. Smith indicates that Saipan Handicraft is co-owned
 5 by Rodrigo M. Capati and Adela S. Capati and that he has been representing both parties in this case.
 6 Since mid-August, Mr. and Ms. Capati have had dissimilar and divergent views regarding their
 7 prosecution strategy in this case. Accordingly, a concurrent conflict of interest exists.

8 In addition, Mr. Smith may withdraw because “the client fails substantially to fulfill an
 9 obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that
 10 the lawyer will withdraw unless the obligation is fulfilled; . . . the representation will result in an
 11 unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the
 12 client; or . . . other good cause for withdrawal exists.” *See* Model Rules of Prof’l Conduct R.
 13 1.16(b)(5), (6) & (7).

14 Here, plaintiff has an outstanding balance of \$9,835.90 for attorney’s fees, which has been
 15 overdue for over a month. Mr. Smith had apprised plaintiff of the outstanding balance on several
 16 occasions. On August 29, 2006, Mr. Smith sent a letter to Rodrigo M. Capati and Adela S. Capati,
 17 co-owners of Saipan Handicraft, to notify them that he intends to seek withdrawal from
 18 representation if their account was not paid in full by September 6, 2006. On September 13, 2006,
 19 Mr. Smith sent by U.S. mail - first class - his motion to withdraw. Mr. Smith personally served Ms.
 20 Capati of his motion to withdraw on September 14, 2006. Mr. Smith filed his motion to withdraw as
 21 counsel of record on September 14, 2006. No payment has been forthcoming.

22 Because plaintiff has failed to substantially fulfill its obligation to Mr. Smith regarding his
 23 legal services and because Mr. Smith had given his clients reasonable warning that he would seek
 24 withdrawal from representation if their account was not paid in full by a date certain and no payment
 25 has been forthcoming, the court finds that good cause exists.

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1 **ACCORDINGLY, THE COURT GRANTS** Mr. Smith's motion to withdraw as attorney of
2 record for plaintiff.

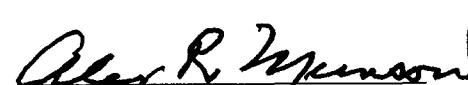
3 Pursuant to Model Rule of Professional Conduct 1.16(d), Mr. Smith shall take steps to the
4 extent reasonably practicable to protect Mr. and Ms. Capati's interests.

5 Plaintiff is hereby advised to obtain new legal counsel. If plaintiff obtains new counsel,
6 plaintiff shall give notice to the court and to all represented parties of the name(s) of such counsel
7 within thirty (30) days or until October 27, 2006. The notice shall also include the identity of the
8 owners and signatories of Saipan Handicraft that such counsel represents (*i.e.* Rodrigo Capati, Adela
9 Capati, and / or Rodel Capati).

10 The court's Order to Show Cause, No. 132 (Sept. 6, 2006), is hereby taken off calendar
11 pending the notice of new counsel.

12 **IT IS SO ORDERED.**

13 **DATED** this 27th day of September, 2006.

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16 
17 ALEX R. MUNSON
18 Chief Judge